

# **EXHIBIT 20**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

|                                  |   |                       |
|----------------------------------|---|-----------------------|
| PHILLIPS, L. G. , LCD CO. , LTD, | ) |                       |
|                                  | ) |                       |
| Plaintiffs,                      | ) | C. A. No. 04-343(JJF) |
|                                  | ) |                       |
| v.                               | ) |                       |
|                                  | ) |                       |
| TATUNG CO. , TATUNG COMPANY OF   | ) |                       |
| AMERICA, INC. , and VIEWSONIC    | ) |                       |
| CORPORATION,                     | ) |                       |
|                                  | ) |                       |
| Defendants.                      | ) |                       |

Hearing of above matter taken pursuant to notice before Renee A. Meyers, Registered Professional Reporter and Notary Public, in the law offices of BLANK ROME, LLP, 1201 North Market Street, Wilmington, Delaware, on Monday, August 27, 2007, beginning at approximately 11:30 a.m. , there being present:

BEFORE: THE HONORABLE VINCENT J. POPPITI , SPECIAL MASTER  
APPEARANCES:

THE BAYARD FIRM  
RICHARD D. KIRK, ESQ.  
222 Delaware Avenue, Suite 900  
Wilmington, Delaware 19899  
for Plaintiffs

CORBETT & WILCOX  
Registered Professional Reporters  
230 North Market Street Wilmington, DE 19899  
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1 APPEARANCES (Continued):

2 MCKENNA, LONG & ALDRIDGE, LLP  
3 CASS W. CHRISTENSON, ESQ.  
4 REL S. AMBROZY, ESQ.  
5 LORA BRZEZYNSKI, ESQ.  
1900 K Street, N.W.  
Washington, D.C. 20006  
for Plaintiffs

6 RICHARDS LAYTON & FINGER  
7 FREDERICK L. COTTRELL, III  
8 ANNE SHEA GAZA, ESQ.  
One Rodney Square  
Wilmington, Delaware 19801  
for Defendant Tatung Co.

9 GREENBERG TRAURIG LLP  
10 FRANK MERIDETH, ESQ.  
11 VALERIE HO, ESQ.  
12 MARK KREISMAN, ESQ.  
2450 Colorado Avenue, Suite 400E  
Santa Monica, California 90404  
for Defendant Tatung Company of America, Inc.

13 CONNOLLY BOVE LODGE & HUTZ LLP  
14 JAMES D. HEISMAN, ESQ.  
15 1007 North Orange Street  
Wilmington, Delaware 19899  
for Defendant ViewSonic Corporation

16 BINGHAM McCUTCHEN LLP  
17 SCOTT R. MILLER, ESQ.  
355 South Grand Avenue  
18 Los Angeles, California 90071-3106  
for Defendant ViewSonic Corporation

19 RASKIN PETER RUBIN & SIMON LLP  
20 TRACY ROMAN, ESQ.  
21 1801 Century Park East, 23rd Floor  
Los Angeles, California 90071  
for Defendant ViewSonic Corporation

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1 SPECIAL MASTER POPPITI: Mr. Kirk, please.

2 MR. KIRK: Thank you, Your Honor. This is  
3 Richard Kirk from The Bayard Firm for the plaintiff, LG  
4 Phillips LCD Co., Ltd. With me on the line from  
5 Washington are my colleagues from McKenna, Long &  
6 Aldridge, Cass Christenson, Rel Ambrozy, and Lora  
7 Brzezynski.

8 MS. GAZA: Good afternoon, Your Honor. Anne  
9 Gaza from Richards, Layton & Finger. On the phone with  
10 me is Valerie Ho from Greenberg Traurig for the Tatung  
11 defendants.

12 SPECIAL MASTER POPPITI: Thank you.

13 MS. HO: And Frank Merideth as well.

14 SPECIAL MASTER POPPITI: Thank you.

15 MR. HEISMAN: Good afternoon, Your Honor.  
16 Jim Heisman from Connolly Bove on behalf of ViewSonic  
17 Corporation. With me on the line are Scott Miller and  
18 Tracy Roman in California.

19 SPECIAL MASTER POPPITI: Thank you.

20 I just want to make sure that everyone has  
21 in front of them what we would be discussing today, and  
22 that would be correspondence from Fred Cottrell dated  
23 August 26th, 2007. I also have correspondence,  
24 actually, e-mail from Mr. Kirk that's dated Friday,

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1 Cass Christenson. Why don't I go through, if I may, and  
2 I can just sort of, starting at the beginning, I can  
3 flag any concerns that we had and we can get your input  
4 if that's acceptable.

5 SPECIAL MASTER POPPITI: Sure.

6 MR. CHRISTENSON: Some of these I don't want  
7 to revisit because I think they are acceptable given  
8 your prior guidances and instructions. For example,  
9 topics 1B, C, D, topics 2B, C, and D, I think, are  
10 within the general scope of which you had found  
11 permissible.

12 SPECIAL MASTER POPPITI: Okay.

13 MR. CHRISTENSON: I did want to raise an  
14 issue with respect to topic 1B.

15 SPECIAL MASTER POPPITI: Yes.

16 MR. CHRISTENSON: Topic 2B is the same for  
17 purposes of this concern.

18 SPECIAL MASTER POPPITI: It's a mirror.

19 MR. CHRISTENSON: And that is that it's  
20 framed in a way that is related to your claim  
21 construction. And, so, it's asking potential -- and we  
22 discussed this with the defendants as well -- it's  
23 potentially requiring the witness to talk about LPL  
24 products in terms of what claim limitations they meet

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1 under your definitions of those terms. And we  
2 previously agreed with the other side that the Rule  
3 30(b)6 depositions in this case would not encompass  
4 parties' positions or contentions on validity  
5 infringement or enforceability, but, rather, those  
6 issues would be for the expert witnesses.

7 So we don't want to be in a position where  
8 the witness is going to be asked questions that would  
9 fall into that expert realm and require the witness to  
10 take positions related to claim construction.

11 SPECIAL MASTER POPPITI: Mr. Miller.

12 MR. MILLER: Your Honor, what I advised  
13 Mr. Christenson of on the 22nd was that we would be --  
14 consistent with our agreement, if LPL's witness says, We  
15 are relying solely on expert testimony with regard to  
16 those issues, that that's fine, that was our agreement.  
17 But if they intend to put on a witness, a fact witness,  
18 beyond their expert to testify about any of these  
19 things, obviously, we are entitled to know what that  
20 fact witness is going to say and all we would be looking  
21 for here is if there are facts that their fact witnesses  
22 intend to deal with or testify to at trial, we want to  
23 know what they are. If they are going to come in and  
24 say, We are solely relying on expert testimony with

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1 regard to those issues, that will be the end of the  
2 inquiry.

3 SPECIAL MASTER POPPITI: Can I expect, then,  
4 your response is really framed in sub paragraph C, D,  
5 and E of each of those topics, No. 1 and No. 2? I think  
6 what happened, and, certainly, even before looking at  
7 LPL's position with respect to the topic in terms of  
8 arguing through it, when I looked at it, and I did turn  
9 to the topics first, I certainly had the concern that  
10 LPL raises.

11 It seems to me, though, that,  
12 Mr. Christenson, what Mr. Miller just said was what  
13 makes -- it certainly makes sense to me. If topic B  
14 gets responded to by virtue of saying, We intend to rely  
15 on expert opinion, doesn't that answer the concern?

16 MR. CHRISTENSON: It sounds like it would,  
17 Your Honor. I agree with you that the factual -- we  
18 understood were the factual type questions were under  
19 subparts C and D.

20 SPECIAL MASTER POPPITI: C and D.

21 MR. CHRISTENSON: And D, obviously, does not  
22 read that way. So, if that's the -- if the  
23 understanding is that they will not attempt to make LPL  
24 an expert in that regard, then I understand that and

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1 that resolves that concern.

2 SPECIAL MASTER POPPITI: Mr. Miller.

3 Mr. Miller, did you hear?

4 MR. MILLER: Yes. I was speaking on mute.

5 SPECIAL MASTER POPPITI: That's all right.

6 MR. MILLER: Yes. What I said was, Our  
7 agreement originally from the beginning has been so long  
8 as the parties indicates they are relying solely on  
9 expert testimony, that that's the end of the inquiry.

10 SPECIAL MASTER POPPITI: Okay.

11 MR. MILLER: So we are happy to abide by  
12 that.

13 SPECIAL MASTER POPPITI: Okay. I expect  
14 that, with that understanding, the topics and the  
15 subtopics underneath of that are gone; do you agree,  
16 Mr. Christenson.

17 MR. CHRISTENSON: We understand that your  
18 expectation is, Your Honor, that those are permissible  
19 subject areas, yes.

20 SPECIAL MASTER POPPITI: Thank you.

21 MR. CHRISTENSON: Thank you.

22 Topic 1E and 2E, I think, are within the  
23 scope of what you expected. I think there is a concern  
24 there that it's, you know, very broad in terms of the



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1 number of products and the way that the topic is framed,  
2 but, ideally, we will be able to resolve that by trying  
3 to pinpoint certain products. And if not, we will just  
4 have to deal with that topic generally, which is the way  
5 that it's currently framed.

6 So, I don't think there is anything we need  
7 to do today on 1E.

8 MR. MILLER: Your Honor, on that point, in  
9 our discussion on the 22nd, we indicated that,  
10 obviously, if they had documents that would assist the  
11 witness, we are happy to have those documents and try to  
12 narrow issues and use documents in a way that will be  
13 efficient. If there are other documents they have that  
14 they haven't produced, that would be great. If there  
15 aren't, then we will be able to only get the information  
16 that's available.

17 SPECIAL MASTER POPPITI: Okay.

18 MR. CHRISTENSON: With respect to topic  
19 three, and I am looking at the red-lined, which is  
20 topic, actually, 3C, 3D, and 3E, these topics deal very  
21 broadly with sales marketing, supply channels, product  
22 distribution, customer relationships for a whole host of  
23 products, and we understood, from the hearing that we  
24 had with you on August 16th, that ViewSonic was going to

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1 catchall inequitable conduct topic, I suspect, given  
2 Your Honor's prior comments, that would be treated the  
3 same as topic five and you would permit topic 7I even  
4 though LPL's position is that it's really overly -- it's  
5 not clear what's being requested and a more specific  
6 subject matter is set forth in the preceding topics.

7 SPECIAL MASTER POPPITI: Mr. Miller, do you  
8 have anything else to add with respect to I before  
9 discussing some of the other concerns raised with  
10 respect to topic seven?

11 MR. MILLER: Not as to the specifics of  
12 that. Obviously, I am happy to discuss the issues  
13 relating privilege or something that might be implicated  
14 which we also discussed with Mr. Christenson last week.

15 SPECIAL MASTER POPPITI: Okay. Then, with  
16 respect to I, again, I think it's part of the way we  
17 have done -- that I have hopefully assisted in getting  
18 this business accomplished in terms of the way I is  
19 phrased, and I will raise the same concerns and caution  
20 with respect to questioning a witness using, if you  
21 will, 7I.

22 So, having said that, it has to stand the  
23 way it is. And, you know, with respect to  
24 attorney/client privilege and things of that nature, is

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1       it fair to expect that the umbrella of topic No. 7 is  
2       whatever information is going to be elicited is  
3       information that is non-privileged?

4               MR. MILLER: It would be non-privileged or  
5       information about which, if they raise the privilege,  
6       obviously, if they assert it, we are entitled to have  
7       the assertion, and we know we won't see it at trial, but  
8       that's the purpose is, if their questions would be  
9       within the scope of the privilege and they assert it,  
10      that's fine, we will deal with that provided it's a  
11      proper assertion.

12             SPECIAL MASTER POPPITI: I understand.  
13      Mr. Christenson.

14             MR. CHRISTENSON: Yes. I think that  
15      clarification is helpful.

16             Looking at the face of the topics, for  
17      example, in topic 7C and in topic 7H, there is specific  
18      reference to privileged communications within the face  
19      of the topic. So if they are now not planning to  
20      address those issues in the deposition, which is what I  
21      understand to be the case, it's essentially the effect  
22      of amending those topics not to any longer include those  
23      communications.

24             MR. MILLER: Let's just be clear. We are

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1 think she would be the appropriate person.

2 SPECIAL MASTER POPPITI: I don't think I  
3 framed my question very artfully.

4 I don't see anything clearly enough to  
5 suggest to me that there was a focus on anyone as a  
6 30(b)(6) deponent on the issue of inequitable conduct.

7 MR. MERIDETH: I believe that's also  
8 correct. I don't think it is up to the Tatung  
9 defendants to designate the witness that would speak for  
10 McKenna.

11 SPECIAL MASTER POPPITI: I understand that.  
12 But where is the discussion on a 30(b)(6) witness?

13 MR. MERIDETH: The discussion was originally  
14 with respect to Miss Rudich and her knowledge with  
15 respect to the prosecution of these patents which arose  
16 when the issues regarding her testimony came up, I  
17 think, for the second time, at which we discussed the  
18 scope of her deposition that covered both the issues of  
19 the '079 patent and inequitable conduct in light of the  
20 recent disclosure of the Lucky Gold Star reference.

21 If she was not the person to be able to give  
22 that testimony, as we had thought she was, then we  
23 believe that we should be entitled to take a 30(b)(6)  
24 deposition of McKenna on the subject of this recently

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1 produced prior art.

2 SPECIAL MASTER POPPITI: Okay. And I  
3 understand your position with respect to wanting to look  
4 rather squarely at this recent production of the prior  
5 art.

6 I guess my question is: In looking at the  
7 subjects, or the topics, I am sorry -- let me get those  
8 in front of me -- looking at topics No. 1, 2 -- No. 1  
9 and 2 and all the subtopics under that, isn't it fair to  
10 say that those subtopics could have been the subject of  
11 a 30(b)(6) notice before fact discovery concluded?

12 MR. MERIDETH: That's correct, except that  
13 we did not have the information that we now have that  
14 was just produced with respect to this Lucky Gold Star  
15 product, and that creates an entirely new ball game,  
16 from our vista, because we need to know what  
17 considerations were taken with respect to not producing  
18 other prior art references.

19 In other words, prior to having that, we  
20 didn't have a basis to assert, although there were  
21 general allegations in the complaint with -- I mean, in  
22 the answer, that cites inequitable conduct, we didn't  
23 have a specific. Now we have a specific. We have a  
24 product that is in all fours, that is an invalidating

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1 piece of prior art, it was not produced to the patent  
2 office, it was not produced to us but was intentionally  
3 withheld, according to Mr. Christenson, and that was a  
4 strategy that was undertaken by McKenna, and we are now  
5 in a situation --

6 MR. CHRISTENSON: That's not fair. That's  
7 not what I said. That's not correct.

8 SPECIAL MASTER POPPITI: Just let him  
9 finish, please.

10 MR. MERIDETH: That's the way I interpret  
11 it, is that there was a decision made not to produce  
12 this prior art reference. We now have the prior art  
13 reference and it raises very significant issues with  
14 regard to inequitable conduct, and we think we ought to  
15 be able to inquire into those issues.

16 It's not our purpose to inquire into things  
17 that could have been inquired into before, except the  
18 difficulty that we have is, A, we have a real for  
19 instance, it's very specific, and it's the Lucky Gold  
20 Star product. There are other references that are  
21 invalidating and there is going to be an issue as to  
22 whether they were known of or whether they have just  
23 recently been discovered. But, in this case, it was a  
24 product that was produced by LG.

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1                   So, we think that we have a right to inquire  
2           into that and discover why that or any other similar  
3           products, from which that product may have been derived,  
4           there may be some other manufacturers' products that we  
5           have specifically identified, of why those were not  
6           disclosed to the patent office, and, in fact, why they  
7           weren't disclosed to us in discovery.

8                   MS. BRZEZYNSKI: Your Honor, may I respond?

9                   SPECIAL MASTER POPPITI: Yes, please.

10                  MS. BRZEZYNSKI: Your Honor, first of all,  
11           we absolutely disagree that this Lucky Gold Star product  
12           is invalidating prior art and we will address that at  
13           the appropriate time. We also disagree that any  
14           improper conduct has occurred by either MLA attorneys or  
15           by LPL.

16                  Regardless of that, Your Honor, we believe  
17           you nailed it on the head that any notice of the  
18           deposition of MLA should have been served long, long  
19           ago, prior to the close of fact discovery.

20                  Tatung has had an inequitable conduct  
21           defense since 2005. Second, Tatung asserted wrong  
22           theories of prior art relating to its inequitable  
23           conduct defense in its February 2006 interrogatory  
24           answers which we attached as Exhibit K to our August

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1 23rd submission to Your Honor.

2 SPECIAL MASTER POPPITI: I have looked at  
3 those.

4 MS. BRZEZYNSKI: The same issues were raised  
5 by Tatung then; therefore, it's the -- if Tatung wanted  
6 to proceed with a deposition of MLA, it should have done  
7 so during fact discovery.

8 I also want to point out to Your Honor  
9 another important fact. You will notice, in their  
10 August 27th letter sent less than one hour before the  
11 hearing today, that Tatung also refers to an LG 500 LC  
12 class. I want to point out to you, Your Honor, that  
13 Tatung and ViewSonic have already questioned John Kim,  
14 one of the inventors, about that product at length in  
15 March of this year. They also questioned Mr. Bang,  
16 after insisting on his deposition, at length, about that  
17 product in March of this year. They also deposed a  
18 third party, LGEUSA, about that product.

19 So, once again, those issues were before  
20 Tatung and raised by Tatung during fact discovery, and  
21 if they wanted to proceed with a deposition of MLA, they  
22 should have noticed it during fact discovery. It is now  
23 untimely and there is simply no basis for granting a  
24 deposition of MLA at this time.



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1 I think what we have here is an attempt by  
2 Tatung to bootstrap a 30(b)(6) deposition of McKenna,  
3 Long & Aldridge on a notice of deposition and subpoena  
4 for Rebecca Rudich's deposition that they served in  
5 February 2007. That should not be permitted for several  
6 additional reasons, including that Rebecca Rudich's  
7 deposition was withdrawn, by subpoena, and then was  
8 revised to one issue only, only related to the '079  
9 application, which was confirmed by Mr. Merideth as late  
10 as his July 9th e-mail, which is also attached to this  
11 submission.

12 Second, Your Honor, Tatung says, in its  
13 August 27th letter today, that they relied on the  
14 Rebecca Rudich declaration when they issued the  
15 subpoena, so that cannot be accurate because the  
16 subpoena and deposition notice for Rebecca Rudich was  
17 served by Tatung on February 27th, but Miss Rudich's  
18 first declaration was not dated until March 6th, 2007.  
19 So, certainly, there is no possible way that Tatung  
20 could have relied on Rebecca Rudich's declaration when  
21 it served its subpoena.

22 In any event, even if Tatung attempts to  
23 argue that sometime after Miss Rudich's declaration,  
24 Tatung relied on the language in there to suggest that

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1 Miss Rudich was involved in patent prosecution of the  
2 patents-in-suit, again, we argue that that's simply not  
3 possible either. That declaration was signed in 2007.  
4 The language in there says that Miss Rudich works on  
5 patent prosecution activity related to the  
6 patents-in-suit. The only patent prosecution activity  
7 going on in 2007 was related to the continuation  
8 application. The patents-in-suit issued in 2002, and  
9 there has been no patent prosecution activity after that  
10 point.

11 I, therefore, suggest to Your Honor that  
12 Tatung's recent attempt to obtain a deposition of  
13 McKenna, Long & Aldridge is wholly inappropriate and  
14 untimely and should be denied.

15 MS. HO: Your Honor, if I may address a  
16 couple of the points that Miss Brzezynski just brought  
17 up?

18 SPECIAL MASTER POPPITI: Please.

19 MS. HO: First of all, we did not say, in  
20 our submission this morning, that we had relied on  
21 Miss Rudich's declaration in issuing our subpoena to  
22 her. That is not what we said.

23 We issued our subpoena to her and then we  
24 received her declaration which confirmed to us that she

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1 was the appropriate witness. Had we known, as it turned  
2 out, that she is not the appropriate witness, then we  
3 could have subpoenaed someone else. We could have  
4 subpoenaed McKenna or we could have subpoenaed someone  
5 else at the McKenna firm before the close of fact  
6 discovery, but we did not do that because we understood,  
7 based on her declaration, that she was the appropriate  
8 witness.

9 So, that's my first point.

10 My second point is that I know that Your  
11 Honor was just focusing on topic No. 1, but if you turn  
12 to topic No. 2, you see that those topics are really  
13 limited to what's defined in the depo notice as the LPL  
14 prior art products.

15 SPECIAL MASTER POPPITI: Yes.

16 MS. HO: And the definition of LPL prior art  
17 product is the products -- includes the products  
18 disclosed in the recent discovery and that were  
19 conceived, made, marketed, sold, distributed, disclosed,  
20 and/or offered for sale by LPL on or before December  
21 31st, 1998, and that's pretty much the same definition  
22 that was used in LPL's -- I am sorry, in our deposition  
23 notice, supplemental deposition notice to LPL that we  
24 had just talked about earlier.

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1                   SPECIAL MASTER POPPITI: Yes. That's pretty  
2 much the same.

3                   MS. HO: And, so, you see that the topics in  
4 -- or the subtopics in topic No. 2 are generally limited  
5 to the products that were recently disclosed.

6                   And then topic No. 3 has to do with the NEC  
7 litigation which Your Honor has already ruled that we  
8 can explore.

9                   The only question is: Why topic No. 1?  
10 Well, when read in isolation, yes, topic No. 1 could  
11 have been noticed before March 30th, 2007. That's true.  
12 But it would have been pointless for us, Your Honor, I  
13 submit, to just notice topic No. 1 because, back in  
14 March, we did not know about the LPL prior art products  
15 that just recently have been produced and that we want  
16 to explore in topic No. 2. So, the two topics are  
17 interrelated.

18                  SPECIAL MASTER POPPITI: I gather, and I  
19 want you to speak, just very briefly, to  
20 Miss Brzezynski's comments with respect to Tatung's  
21 response to the respective interrogatories that were  
22 identified at Exhibit K. There, Tatung described, with  
23 some factual backdrop, its -- I am just flipping through  
24 it, that's why I am -- it describes some of the factual

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1 backdrop for its assertion of inequitable conduct, and  
2 it, in fact, describes some prior art, as I remember,  
3 when I read it initially.

4 MS. HO: That's correct, Your Honor.

5 MR. MERIDETH: We do have some prior art,  
6 but let me make it clear, we view taking the deposition  
7 of counsel to be a serious matter that should not be  
8 undertaken based upon just skepticism.

9 SPECIAL MASTER POPPITI: Right.

10 MR. MERIDETH: In this case, we have a  
11 situation in which we were presented three weeks ago  
12 with what we view, notwithstanding Miss Brzezynski's  
13 position, to be a smoking gun. That immediately brings  
14 into focus the necessity to take the deposition of MLA  
15 with respect to inequitable conduct with respect to that  
16 reference, and it's not simply that reference in  
17 isolation because, while the other references are not  
18 unimportant, we did not view them, prior to receiving  
19 this most recent disclosure, to be of such moment that  
20 it was necessary for us to depose MLA.

21 We have a new ball game here. We have a  
22 piece of prior art that we believe was intentionally  
23 withheld. We have a right, I respectfully submit, to  
24 explore that. In the context of that area to produce

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1 that prior art, I think we are compelled to ask the  
2 question, Well, if you withheld that piece of prior art,  
3 what other prior art did you withhold? And that  
4 question would not have been appropriate prior to the  
5 production of this Lucky Gold Star product. And I don't  
6 think it is appropriate to argue that, Well, just  
7 because we managed to keep this Lucky Gold Star product  
8 under wraps until the discovery cutoff lapsed, you don't  
9 have any right to make any discovery with respect to  
10 inequitable conduct. That's fundamentally unfair. And  
11 it was the production of that particular product that  
12 really brings this whole matter of inequitable conduct  
13 into focus.

24 SPECIAL MASTER POPPITI: It was against the  
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1 backdrop of this late production. That's what I  
2 understood Ms. Ho's comments.

3 MS. HO: That's correct.

4 MS. BRZEZYNSKI: The issue, though, Your  
5 Honor, is Miss Rudich's deposition was never related to  
6 the patents-in-suit. It was always limited to the '079.

7 If you read Miss Ho's argument, then you  
8 also have to assume that Tatung's offer, over several  
9 months, to accept a declaration from Ms. Rudich was also  
10 an empty offer that they were always going to renege on.  
11 Miss Rudich's deposition was always limited to the '079  
12 and nothing more.

13 Now, correct me, Your Honor, Tatung had  
14 previously asserted every product as prior art in  
15 support of their inequitable conduct defense, including  
16 an LGE product, prior to the close of discovery. Any  
17 deposition of McKenna, Long & Aldridge attorneys should  
18 have been noticed prior to the close of discovery.

19 The suggestion now that the production of  
20 the Lucky Gold Star information somehow raises the  
21 importance of this issue and warrants a deposition is  
22 simply inappropriate.

23 SPECIAL MASTER POPPITI: Let me ask --

24 MS. BRZEZYNSKI: They should have made these

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1       issues during discovery and they should have noticed  
2       this deposition at that time.

3               SPECIAL MASTER POPPITI: There is no  
4       question, certainly in -- there is no question in my  
5       mind that a deposition of a patent prosecutor from  
6       McKenna could have been noticed before. Mr. Miller  
7       acknowledges that and I expect that Miss Ho would  
8       acknowledge that as well.

9               I know, and you all know, and there is even  
10       some case law out there that expresses chagrin when it  
11       is done, there is some case law that suggests if you are  
12       going to depose the inventor, then you shouldn't be  
13       deposing the patent prosecutor -- I think I am correct  
14       in stating it that way -- so, if there was a  
15       determination made not to depose a McKenna, Long  
16       attorney on the issue of inequitable conduct and if the  
17       path forward on Rebecca Rudich was as it is and there is  
18       some garble to it, I understand where we were the day  
19       before there was production of Lucky Gold Star.

20               I think what I see here is, with the  
21       production of -- and maybe -- let me pose this question:  
22       If Lucky Gold Star were produced in isolation and it was  
23       not connected to NEC litigation, would we not be having  
24       a different discussion?



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1 MR. MERIDETH: We very well could be, but,  
2 in this case, we know that at least LG Phillips, and we  
3 believe McKenna was involved in the NEC litigation, had  
4 that sheet, that specification for this product in at  
5 least 1999 or 2000, and, yes, it makes a lot of  
6 difference.

7 MS. HO: And, in fact, Your Honor, we were  
8 able to obtain copies of the complaints in the NEC  
9 matter, and the complaints identify McKenna's  
10 predecessor, which I believe is McKenna -- sorry, I am  
11 just trying to flip through it right now -- it's -- I am  
12 sorry, it's McKenna's predecessor, Long, Aldridge &  
13 Norman as the lead trial counsel in those cases.

14 SPECIAL MASTER POPPITI: Here is where I  
15 think we are: There is no question that I expected  
16 production may lead to the requirement for additional  
17 discovery of whatever -- whatever that additional  
18 discovery was at the time that we had that conversation  
19 about the prospect of having additional discovery  
20 sometime ago, and I want to say it was in the March or  
21 April time frame.

22 Given the production of the Lucky Gold Star  
23 asserted prior art and given the context of its  
24 production, namely, the reference to NEC litigation, I

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1 am satisfied that Tatung should be able to explore all  
2 that that means with a McKenna, Long attorney.

3 Again, I will ask Mr. Merideth and Miss Ho,  
4 for purposes of getting something across my desk as  
5 quickly as possible, to do the form of order -- not a  
6 form of order, it would be in the format of a proposed  
7 recommendation to the Court, reviewed by Miss Brzezynski  
8 for form only, and present it to me not later than the  
9 end of the week Friday.

10 MS. BRZEZYNSKI: Your Honor, I'd like an  
11 opportunity to address their proposed -- Tatung's  
12 proposed topics for examination as well.

13 SPECIAL MASTER POPPITI: Okay.

14 MS. BRZEZYNSKI: Tatung's proposed topics  
15 are extremely broad, not limited to just the Lucky Gold  
16 Star products only. When you are looking at topic No.  
17 1, they are general broad topics as to McKenna's  
18 business policies and procedures and practices, and are  
19 not at all related to Lucky Gold Star products or  
20 anything specific to Lucky Gold Star or prosecution of  
21 the patents-in-suit in NEC litigation.

22 Topic No. 1 is completely inappropriate,  
23 including its two subtopics.

24 SPECIAL MASTER POPPITI: Let's talk about

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1       that for a moment.

2                       Who is going to speak to that, please?

3       Mr. Miller? Mr. Merideth or Miss Ho?

4                       MR. MERIDETH: The issue here is whether  
5       McKenna, Long & Aldridge had a policy with respect to  
6       requiring its clients to produce prior art or a product  
7       that -- or identified product that would implicate  
8       beyond cerebar (phonetic) in the process of prosecuting  
9       the patent.

10                      We need to determine whether or not this  
11       reference to the Lucky Gold Star product was, in fact,  
12       given to McKenna, Long & Aldridge, whether they had it  
13       in their possession, or whether it was not disclosed to  
14       them by their client, that is going to bear on how the  
15       trial of this issue of inequitable conduct goes forward.

16                      If the answer to the question: Did you know  
17       anything about this Lucky Gold Star product?, is, Gee, I  
18       didn't know anything about it; I didn't know that there  
19       was a product like that. The next question is going to  
20       be, Well, what did you do to find out about it? And  
21       that's what the question No. 1 is intended to elicit.  
22       If we can't ask those questions, we are going to have  
23       one arm behind our back.

24                      MS. BRZEZYNSKI: Your Honor, the problem

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1 here is that topic No. 1, as framed, is extremely broad,  
2 covers McKenna's general business practices and  
3 procedures relating to patent prosecution for all of its  
4 clients and all of its matters and is not limited to  
5 just the prosecution of the patents-in-suit.

6 MR. MERIDETH: We need to know whether there  
7 is --

8 SPECIAL MASTER POPPITI: Are you suggesting  
9 that if the topic were changed to say "patents-in-suit,"  
10 that there is some policy or practice that's different  
11 with respect to these patents-in-suit as opposed to  
12 other work that McKenna, Long did between 1998 and 2002?

13 MS. BRZEZYNSKI: I am not saying that there  
14 is a difference. What I am saying is the only relevant  
15 information -- and, first of all, we do argue that NEC  
16 deposition is appropriate.

17 SPECIAL MASTER POPPITI: I understand that.

18 MS. BRZEZYNSKI: But the only relevant area  
19 is prosecution of the patents-in-suit. And getting into  
20 McKenna's general business practices is proprietary and  
21 privileged information and it's inappropriate in this  
22 context.

23 MR. MERIDETH: I respectfully disagree.

24 SPECIAL MASTER POPPITI: I don't know how

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1       there can be any development of what was done or not  
2       done against what I understand to be the topic of  
3       inequitable conduct if Tatung is not able to explore the  
4       process as it is contemplated.

5                   MS. BRZEZYNSKI: They should be required  
6       to --

7                   SPECIAL MASTER POPPITI: Would it be fair  
8       for me to suggest that what I expect Mr. Merideth and  
9       his colleagues would be looking for is what you would  
10      all say in response to an assertion that something went  
11      wrong here. I mean, if you start describing your policy  
12      and practice in the context of, We didn't do anything  
13      out of the ordinary here, without Tatung having the  
14      opportunity to explore that in discovery, I think there  
15      is one hand tied behind their back; isn't there?

16                  MS. BRZEZYNSKI: I disagree. Tatung can ask  
17      questions relating to policies and procedures for  
18      prosecuting the patents-in-suit and should not be  
19      permitted to get broader than that, Your Honor.

20                  We are talking about proprietary information  
21      relating to McKenna's business products being asked by a  
22      competitive law firm.

23                  SPECIAL MASTER POPPITI: Excuse me. Why  
24      can't these topics be framed in the context of the

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1 patents-in-suit?

2 MS. BRZEZYNSKI: I am sorry. Can you say  
3 that again?

4 SPECIAL MASTER POPPITI: Mr. Merideth, why  
5 can't the topics 1A and B be framed in the context of  
6 the patents-in-suit?

7 MR. MERIDETH: They can, Your Honor, so long  
8 as we are able to ask whether there is any variation on  
9 the policies and procedures that are generally  
10 applicable to other clients. In other words, if they  
11 say, Well, we send out a questionnaire, or we ask the  
12 following specific question, or we don't ask the  
13 following specific question, I think we should be able  
14 to ask, Well, in general, is your practice the same or  
15 different with respect to other clients?

16 SPECIAL MASTER POPPITI: Why?

17 MR. MERIDETH: I believe that it pinpoints  
18 the issue of whether or not there has been sufficient  
19 inquiry and inquiry that meets the standard of care  
20 that's required under the patent laws with respect to  
21 asking the patentee to disclose prior art or art that  
22 would preclude patenting because of the on sale of art.  
23 And if, for example, I am not suggesting that was the  
24 case here, MLA simply never asked LGE or LPL for that

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1 information, we are entitled to know that. If it is  
2 their practice to otherwise ask for that information and  
3 they failed to do so in this case, I think we ought to  
4 be able to develop that.

5 MS. BRZEZYNSKI: I submit that those  
6 follow-up questions do not matter and are not relevant  
7 at all to this case, and any questions at all should be  
8 limited to just prosecution of the patents-in-suit.

9 MR. KREISMAN: Your Honor, if I may speak.

10 SPECIAL MASTER POPPITI: Yes.

11 MR. KREISMAN: I may be one of the only  
12 patent prosecutors on the phone. What I can tell you is  
13 there is the issue of the McKenna firm and the attorneys  
14 at the McKenna firm and their predecessor practices have  
15 a tremendous amount of patent work being prosecuted on  
16 behalf of LGE and LG Phillips, and if we are limited to  
17 questioning LG Phillips' representative only on the  
18 patents-in-suit, you can see a position we could be  
19 placed in where, at trial, we will be suddenly advised  
20 there was information that was given to LG Phillips, or  
21 LGE, as a predecessor, about other LG patents that had  
22 been worked on, and if we are not allowed to ask about  
23 those other earlier practices regarding their earlier  
24 portfolio, we will never know. We will be sandbagged.

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1                   Somebody could answer, Well, for these  
2           patents-in-suit, thus or such happened, and if we are  
3           not allowed to follow-up with, Well, what was the  
4           practice with all the hundreds of LG patents, was there  
5           a policy?, it becomes very difficult for us to get any  
6           of the evidence regarding intent.

7                   MS. BRZEZYNSKI: Your Honor, I am now even  
8           more troubled by Mr. Kreisman's comments that they want  
9           to depose a witness about earlier practices about other  
10          patents.

11                  SPECIAL MASTER POPPITI: I don't think I  
12          heard him say "other patents." I thought I heard him  
13          say "other policies and practice."

14                  MR. KREISMAN: That's true, Your Honor.

15                  SPECIAL MASTER POPPITI: Let's do this: I  
16          am going to permit that topics 1A and 1B, given the  
17          nature of the conversation that we have just had, I do  
18          not think that that involves proprietary information.  
19          Your record is protected. The document that I will look  
20          to sign, I would expect, would highlight the discussion  
21          that we have just had, certainly not in the detail that  
22          we have had it, so that Judge Farnan can be informed, as  
23          I expect he would be, given the nature of the  
24          conversation that we have had.



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1                   Is Friday, with this document, also doable,  
2     please?

3                   MR. MERIDETH: Yes.

4                   SPECIAL MASTER POPPITI: From LPL's  
5     perspective?

6                   MS. BRZEZYNSKI: Yes, Your Honor. If I may  
7     just add, is my understanding correct that the topics  
8     are limited, however, to the Lucky Gold Star product and  
9     should not include any questioning related to any other  
10    of the asserted prior art products by Tatung?

11                  MS. H0: We have defined prior art LPL  
12    product in the deposition notice.

13                  SPECIAL MASTER POPPITI: Yes, you have.

14                  MS. H0: And those --

15                  SPECIAL MASTER POPPITI: It's all  
16    supplemental.

17                  MS. H0: Yes, Your Honor. Well, it's all  
18    supplemental and that 500 LC monitor. Let me clarify.  
19    It's the product identified in the recent discovery  
20    produced by LPL plus the LG 500 LC monitor.

21                  MR. MERIDETH: Let me explain why the 500 LC  
22    is important in that context. It has to do with the  
23    supplemental information filing by LPL with respect to  
24    the '079 patent in which other prior art that was

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1 identified by the Tatung defendants was provided to the  
2 patent office, that the reference to the 500 LC was  
3 omitted, and we want to know why.

4 MS. BRZEZYNSKI: Your Honor, the LG 500 LC  
5 product was raised by Tatung in March and April. If  
6 they had an issue with that product, they should have  
7 raised it in a notice prior to this close of fact  
8 discovery.

9 SPECIAL MASTER POPPITI: I thought I  
10 understood Mr. Merideth to say, and please correct me if  
11 I am wrong or restate what you have just said to me, the  
12 reason why the LG 500 LC is being raised at this time,  
13 in this context, is because of information that was  
14 received in supplemental production?

15 MR. MERIDETH: Correct.

16 MR. KREISMAN: I think I can clarify the  
17 point if I may, Your Honor.

18 SPECIAL MASTER POPPITI: Please.

19 MR. KREISMAN: We spoke, in the earlier  
20 hearings, about the '079 prosecution, and Mr. Merideth  
21 mentioned an information disclosure statement, an IDS,  
22 and he had mentioned that certain products were  
23 appearing on that now, and Miss Brzezynski, rightly so,  
24 indicated to Your Honor that it would be McKenna's

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1 obligation, when references that were asserted as prior  
2 art in litigation came to their attention, that they  
3 would submit those in an IDS to the patent office.

4 SPECIAL MASTER POPPITI: I remember exactly  
5 what you said and I understand the obligation.

6 MR. KREISMAN: Thank you, Your Honor. And  
7 what was our reading of the IDS is the 500 LC product,  
8 which has been repeatedly identified in interrogatory  
9 responses by the defendants, continues to be omitted  
10 from that IDS list.

11 MS. BRZEZYNSKI: Your Honor, I thought we  
12 discussed this issue previously that if an IDS was  
13 submitted in the '079 application, that that was an  
14 obligation of McKenna to provide that information but  
15 that it had nothing to do with the prosecution of the  
16 patents-in-suit. If it had to do with the '079, then  
17 the appropriate inquiry would be of Ms. Rudich but not  
18 of an MLA attorney having to do with the patent  
19 prosecution of the patents-in-suit.

20 MS. H0: The reason that the LG 500 LC  
21 monitor continues to be relevant in this case, Your  
22 Honor, is because, based on LPL's most recent  
23 infringement contention, which was served after Your  
24 Honor's claim construction rulings, we believe that this

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1 product is an invalidating prior art reference and it  
2 was not disclosed during prosecution of the  
3 patents-in-suit, and based on LPL's own reading and  
4 application of Your Honor's claim construction, this  
5 product would have been material prior art, would be  
6 invalidating prior art, and should have been disclosed.

7 So, it is the receipt of LPL's recent  
8 infringement contentions that have confirmed for us that  
9 this is a material reference for purposes of inequitable  
10 conduct, and that is why we have included it as one of  
11 the products in the definition for prior art LPL  
12 products.

13 MS. BRZEZYNSKI: If that is all, Your Honor,  
14 Tatung was making those claims in March and April when  
15 they deposed LPL witnesses on the LG 500 LC product.

16 SPECIAL MASTER POPPITI: Look, I didn't  
17 focus on the LG 500 issue. I think I understand what  
18 you are talking about, but, quite frankly, I want --

19 MR. AMBROZY: Your Honor, also the  
20 argument --

21 SPECIAL MASTER POPPITI: Give me a second,  
22 please. What I want you to do, and I am sorry that I  
23 have to do it this way, I just want you to focus on the  
24 500 LC issue, and I want you to do it without discussing

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1       it on the phone. I want to be able to look at it and I  
2       want it in two pages and I want cross filings,  
3       simultaneous filings tomorrow, not later than 3:00 my  
4       time, so you will all have time to get it done. And I  
5       will advise counsel sometime late tomorrow afternoon  
6       what my view of including or not including the LG 500 LC  
7       product hopefully by the end of the business day  
8       tomorrow if not first thing Wednesday morning.

9               MS. HO: I did not catch the time. Did you  
10       say 3:00?

11               SPECIAL MASTER POPPITI: 3:00 my time,  
12       please. That would be 12:00 your time. And I just want  
13       two short pages without having to use a magnifying  
14       glass.

15               Okay?

16               MS. BRZEZYNSKI: Yes, Your Honor.

17               SPECIAL MASTER POPPITI: Anything else,  
18       please? Thank you all.

19               MR. CHRISTENSON: Your Honor, just briefly  
20       before we conclude, we have had some discussions  
21       off-line to agree on some revisions or refinement to the  
22       expert disclosure deadlines, and I don't think it would  
23       impact any of the work that you are going to be doing,  
24       but in the abundance of caution, and to assist you in